

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 93-0934 CS
Controlled Substance Excise Tax
For Tax Period: 09/02/93

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax - Imposition

Authority: IC 6-7-3-5

Taxpayer protests the imposition of the Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested, by the Speedway Police Department, on September 2, 1993, for possession of marijuana. The Department assessed the Controlled Substance Excise Tax against the taxpayer based on 28,166.11 grams of marijuana. Taxpayer protested this assessment. Additional facts will be provided below, as necessary.

I. Controlled Substance Excise Tax - Imposition

DISCUSSION

Indiana Code section 6-7-3-5 provides for the imposition of the controlled substance excise tax on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer protests the imposition of the Controlled Substance Excise Tax and argues he was not in possession of the marijuana. Taxpayer states he was operating a business as a tow-truck driver and serviceman. Taxpayer claims he was called to tow a vehicle from a motel parking lot, asked to service the vehicle and return it to the lot. Taxpayer was stopped by officers of the Speedway Police Department as he towed the vehicle from the motel parking lot to another location. Marijuana was found in the towed vehicle's gas tank.

Taxpayer points to Speedway Police Department reports which state the towed vehicle was driven by someone other than the taxpayer to the motel. The vehicle was registered in Texas and was owned by someone other than the taxpayer. The majority of marijuana on which the assessment was based was found in a gas tank located in the towed vehicle. When taxpayer was stopped by the Speedway Police he was operating his tow truck with the towed vehicle on the "sling." Taxpayer voluntarily towed the vehicle to the Speedway Police Department.

A subsequent search warrant served on taxpayer's residence uncovered 31.21 grams of controlled substances.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer will only be assessed the Controlled Substance Excise Tax on those controlled substances found in his possession. Taxpayer is not determined to have been in possession of the controlled substances located in a vehicle owned by another which was being towed by the taxpayer. As the operator of a towing business, taxpayer does not have the obligation to inspect vehicles prior to towing. Taxpayer was in possession of 31.21 grams of controlled substances found in his residence and remains liable for the excise tax based on that amount.